

CHAPTER-II

GENERAL EXPLANATIONS

6. Definitions in the code to be understood subject to exceptions.-

Throughout this Code every definition of an offence, every penal provisions, and every illustration or every such definition or penal provision, shall be understood subject to the exceptions contained in the Chapter entitled —General Exceptions —, though those exceptions are not respected in such definition, penal provision, or illustration.

Illustrations

(a) The sections in this Code, which contain definitions of offences, do not express that a child under seven years of age cannot commit such offences, but the definitions are to be understood subject to the general exception which provides that nothing shall be an offence which is done by a child under seven years of age.

(b) A, a police officer, without warrant, apprehends Z, who has committed murder. Here A is not guilty of the offence of wrongful confinement for he was bound by law to apprehend Z and therefore the case falls within the general exception which provides that —nothing is an offence which is done by a person who is bound by law to do it

COMMENTS

Scope: Section 6, in effect, provides that if the case of the accused falls within a general exception (Chapter 4) he is immune from criminal liability. It is not necessary to repeat in every section defining or punishing an offence that it is subject to Chapter 4.- About *Latif v. State of Assam*, 1918 Cr LJ 1205 (Gau.); *Khageswar Pujari v. State of Orissa*, 1948 CR LJ 1984 Cr LJ 1108 (Orissa).

Effect : The effect of Section 6 (in broad terms) is that every penal provision of the Code is to be read as subject to the general exceptions contained in Chapter 4 (sections 76-106) of the Code.- *Khageswar Pujari v. State of Orissa*, 1984 Cr LJ 1108 (Orissa)

7. Sense of expression once explained.- Every expression which is explained in any part of this Code in conformity with the explanation.

8. Gender.- The pronoun — he and its derivatives are used of any person, whether male or female.

9. Number.- Unless the contrary appears from the context, words importing the singular number include the plural number, and words importing the plural number include the singular number.

COMMENTS

Compare Section 13. General Clauses Act, 1897.

10. —Man, —Woman.- The word —man, denotes a male human being of any age; the word —woman denotes a female human being of any age.

COMMENTS

The principal significance of Section 10 lies in the words —if any age. Thus Woman includes infant females as also mentioned in Section 354 of the Code.- State v. Major Singh, AIR 1967 SC 63 : 1967 Cr LJ.

11. —Person.- The word —person includes any company or association or body of persons, whether incorporated or not.

COMMENTS

Scope : Section 11 has the effect of including within the expression :

- (a) any company, whether incorporated or not;
- (b) any association of persons, whether incorporated or not; and
- (c) any body of persons, whether incorporated or not.

Criminal liability of corporations : Corporations are either :

- (a) Corporations sole (one person or entity constituted by law as an artificial juridical person), or
- (b) Corporations in aggregate (e.g. companies).

Corporations and their officers : The general proposition that corporations may be criminally liable gets some support from Section 11, which has also the effect of giving them the benefit of criminal law if they happen to become the victim of specific offences sentenced to imprisonment.- *Syndicate Transport Co.*, (1963) 66 Bom LR 197. Conversely, if the offence is punishable with fine only, the corporation (e.g. a local authority) can be punished.- *Girdharilal v. Lalchand*, 1970 Cr LJ 987 (Raj).

More important is the question of liability of Directors and responsible officers of corporations. Where, technically, the offender is a corporation, the Directors, etc. may still be liable (in addition to the criminal liability of the corporation) if their own participation in the offence amounts to abetting the offence within the meaning of Sections 107 and 108 of the Indian Penal Code. Besides this, most special Acts enacted during the recent years contain provisions under which Directors and other Officers, who are in charge of the affairs of the corporation and responsible to the corporation for the conduct of the affairs of the corporation, are also declared criminally liable for an offence against that special Act, unless they can prove that the offence was committed without their knowledge, or that they exercised all due diligence to prevent the commission of that offence.

Criminal liability of partners: The Supreme Court, in *Sham Sundar v. State of Haryana*, (Judgment dated 21 August, 1989), JT 1989(3) SC 523, has held that with reference to Section 10 of the Essential Commodities Act, 1955, the true position is that only a partner responsible for conduction the business of the firm could be convicted. The case related to breach of the Haryana Rice Procurement (Levy) Order, 1979. The offender was said to have failed to supply the necessary quantity of rice as per levy rules. Such short supply in contravention of Rice Procurement Order is punishable under Section 7 of the Essential Commodities Act. All the partners were convicted of the offence. It was urged by the appellants before the Supreme Court that there was no evidence that the appellants were in charge of the business of the firm, and for want of evidence, the conviction could not be sustained. The Supreme Court upheld the contention and allowed the appeal. It may be mentioned that Section 10 (1) of the Essential Commodities Act provides that if the person contravening an Order made under the Act is a company (which is defined to include a firm), every person who, at the time of contravention,

was in charge of ,and was responsible to , the company for the conduct of the business of the company(as well as the company), shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly. However , this provision does not render any such person liable to any punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

The Supreme Court held that Section 10 of Essential Commodities Act was penal provision with a criminal liability, and must be construed strictly. Section 10 does not provide for vicarious liability and does not make all partners liable for an offence, whether they do business or not. The Court observed as under, in this context:-

—It is, therefore, necessary to add an emphatic note of caution in this regard. More often it is common that some of the partners of a firm may not even be knowing of what is going on day to day in the firm. There may be partners, better known as sleeping partners, who are not required to take part in the business of the firm. There may be ladies and minors who were admitted for the benefit of partnership. They may not know anything about the business of the firm. It would be a travesty of justice to prosecute all partners and ask them to prove under the proviso to sub-section (1) that the offence was committed without their knowledge. It is significant to note that the obligation for the accused to prove under the proviso that the offence took place without his knowledge or that he exercised all due diligence to prevent such offence, arises only when the prosecution establishes that the requisite condition mentioned in sub section (1) is established . The requisite condition is that the partner was responsible for carrying on the business and was, during the relevant time, in charge of the business. In the absence of any such proof, no partner could be convicted. We, therefore, reject the contention urged by counsel for the State.

12. —Public.— The word public includes any class of the public, or any community, any company , whether incorporated or not;

13. [Definition of Queen].— Repealed by the A.O.1950.

14. —Servant of Government .— The words —servant of Government denote any officer or servant continued, appointed or employed in India by or under the authority of Government.

15. [Definition of —British India].— Repealed by the A.O.1937.

16. [Definition of —Government of India].- Repealed .

17. —Government.- The word —Government – denotes the Central Government or the Government or the Government of a State.

18. —India.- —India means the territory of India excluding the State of Jammu and Kashmir.

COMMENT

This definition does not conflict with the Constitution.- K.P.K. Vara Prasad v. Union of India, AIR 1980 AP 243.

It is only a verbal definition, confined to interpretation for the expression —India as occurring in the code in various sections- such as Sections 108A, 121A, 359,360,etc. The focus in Section 18 is not on India as a political entity, but on the geographical aspect of the territory intended to be connoted by the expression —India as occurring in those sections of the Code where the territorial aspect is the crucial element. The definition would have been more expressive (and would have created less controversy) if it began something like this—India in relation to the territory....

19. —Judge.- The word —judge denotes not only every person who is officially designated as judge but also every person- who is empowered by law to give, in any legal proceeding, civil or criminal, definitive judgment by law to give, in any legal proceeding , civil or criminal, definitive judgment or a judgment which, if confirmed by some other authority, would be definitive or who is one of a body of persons if empowered by law to give such a judgment.

Illustrations

- (a) A Collector exercising jurisdiction in a suit under Act 10 of 1859, is a Judge.
- (b) A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment, with or without appeal, is a judge.
- (c) A member of a panchayat which has power, under Regulation VII, 1810, of the Madras Code to try and determine suits, is a judge.

- (d) A Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another Court, is not a Judge.

20. —Court of Justice.— The words —Court of Justice denote a Judge who is empowered by law to act judicially alone, or a body of judges who is empowered by law to act judicially as a body, when such judge or body of judges is acting judicially.

Illustrations

A panchayat acting under Regulation VII, 1816, of the Madras Code, having power to try and determine suits, is a Court of Justice.

21. —Public servant.— The words public servant denote a person falling under any of the descriptions hereinafter following, namely:-

First.—¹[***]

Second.— Every Commissioned Officer in the Military, Naval or Air Forces of India;

Third.— Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

Fourth.— Every officer of a Court of Justice (including a liquidator, receiver or commissioner) whose duty it is as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties;

Fifth.— Every juryman, assessor, or member of a panchayat assisting a Court of Justice or public servant;

Sixth.— Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent

1. Clause first omitted by the A.O.1950.

Seventh.— Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

Eighth.- Every officer of the Government whose duty it is. As such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

Ninth.- Every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue process, or to investigate, or to report, on any matter affecting the pecuniary interests of the government, or to make or authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government;

Tenth.- Every person whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the right of the people of any village, town or district;

Eleventh.- Every Person-

- (a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the government;
- (b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956).

Illustration

A Municipal Commissioner is a public servant.

Explanation: 1- Person falling under any of the above descriptions are public servants, whether appointed by the Government or not.

Explanation: 2- Wherever the words —public servant‡ occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

Explanation :3 – The word —election‖ denotes an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of selection to which is by; or under, any law prescribed as by election.

STATE AMENDMENT

State of Rajasthan:

Amendment of Section 21, Central Act, 45 of 1860.- In Section 21 of the Indian Penal Code, 1860 (Central Act 45 of 1860), in its application to the State of Rajasthan, after clause twelfth, the following new clause shall be added, namely:

“Thirteenth.- Every person employed or engaged by any public body in the conduct and supervision of any examination recognized or approved under any law.

Explanation :- The expression –Public Body‖ includes-

- (a) a University, Board of Education or other body, either established by or under a Central or State Act or under the provisions of the Constitution of India or constituted by the Government; and
- (b) a local authority.‖

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COMMENTS

Bank Employees : If the Legislature wanted certain specific Bank employees to be considered — Public Servants‖ for a limited purpose, the contrary cannot be held by taking recourse to the wide sweep of Section 21, I.P.C-N. *Vaghul v. State of Maharashtra*, 1987 Cr LJ 385 : (1987) 2 Crimes 289.

Banks: An employee of a nationalized bank is a public servant, being the employee of a Government company or of a corporation controlled by the Government of India.- *Kundanlal v.B.N.Khanna*, 1983 Cr LJ 141 (P&H). Contrary view in *Raghunath Rai treble*

bt soecuak ciyrts fir cirryotuib abd itger charges .- Union of India v. Ashok Kumar Mitra, AIR 1995 SC 1976.

President and Secretary of the Co-operative Society : The President and Secretary of the Co- operative Society are not public servants within the meaning of clause 12(b) of Section 21 of the Indian Code.- State of Punjab v. Kesarichand, 1987 Cr LJ 549: AIR 1987 P&H 216.

Private Medical Practitioner: Private Medical Practitioners are not public servants even if their names are included in the panel of doctors.- Dr. Arvind C. Shah v. State of Gujrat,(1986)1 GLR 481 : (1986)2 C r LG 59.

Surveyor : Surveyor of Insurance claims does not fall within Section 21 (5) or Section 21 (12).- A.R.Puri v. State, (1987)2 Crimes 102 (Del).

MP : A member of Parliament is a Public Servant u/s 2(c) of Prevention of Corruption Act, 1988.- P.V. Narasimha Rao v. State,(CBI/SPE),(1998)1 SCJ 529.

MLA : MILA is not a public servant .- R.S Nayak v. A.R Antulay, AIR 1984 SC 684 : 1984 Cr LJ 2080(Mad).

Ministers : Ministers are public servants because :

- (a) they receive ‘pay’, an expression wider than salary,
- (b) they are appointed by the Governor (articles 164 and 167 of the Constitution),
- (c) they perform public functions .- M.Karunanidhi v Union of India, 1979 Cr LJ773 (SC) : AIR 1979 SC 598; Shiv Bahadur, 1954 CrLJ 910 (SC).

Co-operative Societies : Co- operative Societies are not corporations owned or controlled by the State. Their officer are not public servants – not even those on deputation from Government. – S.S. Dhanoa v. Delhi Municipality, 1981 Cr LJ 781.

22. —Movable property§.- The words —movable property§ are intended to include corporal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth.

23. —Wrongful gain§.- —wrongful gain§ is gain by unlawful means of property to which the person losing it is legally entitled.

—Wrongful loss§.- —Wrongful loss§ is the loss by unlawful means of property to which the person losing it is legally entitled.

Gaining wrongfully , losing wrongfully.- A person is said to gain wrongfully. A person is said to lose wrongfully when such person retains wrongfully, as well as When such person retains wrongfully, as well as when such person acquire wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.

COMMENTS

The first part of Section 23, third paragraph makes it clear that it covers wrongful acquisition as well as wrongful retention in other words, initial wrongfulness or subsequent wrongful. – Kirshan Kumar,(1960)1 SCR 452.

24. —Dishonestly§.- Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing —dishonestly§.

COMMENTS

Concealment may amount to dishonesty.-N. Vaghul v. State of Maharashtra , 1987 Cr LJ 385: 1986 Bank J 643 : (1987)2 Crimes 289 : (1986)3 Bom CR 422.

25. —Fraudulently§.- A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.

COMMENTS

It is necessary to point out that pecuniary advantage or pecuniary harm is not necessary for an act to amount to 'fraud'. - Dr. Vimla v. Delhi Administration, AIR 1963 SC 1572 : (1963) 2 Cr LJ 432 : (1963) 2 SCJ 559

Conversely, deception is necessary to constitute fraud, but not necessary for causing wrongful gain or wrongful loss. - Dr. Vimla v. Delhi Administration, AIR 1963 SC 1572.

If there is neither deceit nor dishonest gain or loss, the case may not fall under either. - S. Dutt, 1966 CR LJ 459 (SC).

26. —Reason to believe. - A person is said to have reason to believe a thing if he has sufficient cause to believe that thing but not otherwise.

27. Property in possession of wife, clerk or servant. - When property is in the possession of a person's wife, clerk or servants, on account of that person, it is in that possession within the meaning of this Code.

Explanation. - A person employed temporarily or on a particular occasion in the capacity of a clerk or servant, is a clerk or servant within the meaning of this section.

COMMENTS

—On account to that person : It is necessary that the possession of the wife must be on account of her husband. Thus where the wife is in independent control of certain articles, the Section will not apply. - Dharam Singh, 1961 Cr LJ 152 : AIR 1961 Punj 30. This position is true of all discriminatory things. - Chela Ram v. State, 1984 Cr LJ 1143 (Raj).

Possession in English Criminal Law : In Warner v. Metropolitan Police Commissioner, (1968) 2 All ER 356 (HL), the House of Lords clearly held that in criminal law the mental element is necessary to constitute possession and approved Lord Parker CJ's decision in *Lockyer v. Gibb*, (1966) 2 All ER 653, 655, to that effect:

—A person cannot be said to be in possession of some article which he or she does not realize is or may be in her handbag, in possession of some article which he or she does not

realize is or may be in her handbag, in her room or in some other place over which she has control.

28. —Counterfeit. – A person is said to —counterfeit who causes one thing to resemble another thing intending by means of that resemblance to practice deception, or knowing it to be likely that deception will thereby be practiced.

Explanation 1. -It is not essential to counterfeiting that the imitation should be exact.

Explanation 2. - When a person causes one thing to resemble another thing, and the resemblance is such that a person might be deceived thereby, it shall be presumed, until the contrary is proved, that the person so causing the one thing to resemble the other thing intended by means of that resemblance to practice deception or knew it to be likely that deception would thereby be practiced.

29. —Document. - The word —document denotes any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used or which may be used, as evidence of that matter.

Explanation 1. – It is immaterial by what means or upon what substance the letters, figures or marks are formed, or whether the evidence is intended, for or may be used in, a Court of Justice, or not.

Illustrations

A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document.

A cheque upon a banker is a document.

A power- of attorney is a document.

A map or plan which is intended to be used or which may be used as evidence, is a document.

A writing containing directions or instructions is a document.

Explanation 2. – Whatever is expressed by means of letters, figures or marks as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures or marks within the meaning of this Section, although the same may not be actually expressed.

Illustration

A writes his name on the back of a bill of exchange payable to his order. The meaning of the endorsement, as explained by mercantile usage, is that the bill is to be paid to the holder. The endorsement is a document, and must be construed in the same manner as if the words –Pay to the order or words to that effect had been written over the signature.

¹[29A. —**Electronic record**— The words —electronic record shall have the meaning assigned to them on clause (t) of sub section (1) of section 2 of the Information Technology Act, 2000.]

30. —Valuable security— The words —valuable security denote a document which is, or purports to be, a document where by any legal right is created, extended, transferred, retracted, extinguished or released, or where by any person acknowledges that he lies under legal liability , or has not a certain legal right.

Illustration

A writes his name on the back of a bill of exchange. As the effect of this endorsement is to transfer the right to the bill to any person who may become the lawful holder of it the endorsement is a —valuable security.

COMMENTS

The essence of _valuable securities lies in its essential link with(a) a legal right , or (b) a legal liability. In the case of a legal right, a mere acknowledgement that a person does not have a legal right becomes a valuable right. This is different from —release, in which the right is asserted, but (by the same instrument) abandoned.

The principal Sections of the Code in which the expression —value able secretly occurs are concerned with (a) offences against the human body (Sections 329-331, 347,348), (b) offences against property (Section 420), and(c) offences relating to documents (Sections 467 and471).

An unregistered document (which is not fully effective without registration) is not, in the strict sense, a valuable security but it purports to be a valuable security and so falls within Section 467 (forgery of valuable security, etc).- Kashi Nath v. Naik, (1897) ILR 25 Cal 207.

If a document purports to be only a copy of a valuable security, its forgery is not punishable under Section 467.- Gobinda Prasad, (1962) I 1 Cr LJ 316.

However, in certain circumstances, such conduct may amount to the offence of cheating.

31. —A will. The words —a will denote any testamentary document.

COMMENTS

Section 31 of IPC may be compared with Section 2 (h) of Indian Succession Act (39 of 1925). The latter defines —will as the legal declaration of the intentions of a testator with respect to his property when he desires to be carried into effect after his death. Forgery of a will is punishable under Section 467 of the Indian Penal Code.

32. Words referring to acts include illegal omissions.- In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions.

COMMENTS

Compare Section 3(2), General Clauses Act, 1897 (latter part) where it enacts that words which refer to acts done extend also to illegal omissions.

Concept of —act : in jurisprudence —act means any event which is subject to the control of the human will. See Salmond Jurisprudence (11th edition), pages 399-401.

The elements of an —act are-

- (1) its origin in some mental or bodily activity of the doer,
- (2) its circumstances, and
- (3) its consequences.

Omission is covered with in 'act' if it is illegal.- Rewati Mohan Das v. Yatindra Mohan Ghosh, AIR 1934 PC 100. But it does not appear to be necessary that the omission should be intentional.

If there is a duty to take care in a particular situation, omission to take care in that situation would be punishable.- Benoy Chandra, 1984 Cr LJ 1038(Cal). An omission to act with care if caused by 'mental' blackout, would be excused.- Cf Bratty v. Attorney General for Northern Ireland,, (1961)3 All ER 523(HL).

According to Holmet, The Common Law, Para 91 : an act is always a voluntary muscular contraction and nothing else.

Sleep walking : Conduct during fit or in sleep walking is excused as it is involuntary.- R v. Charlson, (1955)1 All ER 859,861,864; R v. Padison, (1973)3 All ER 347; Cf. Ellholt-Responsibility for involuntary acts, Ryan v. R (1967), 687 41 Australian Law Journal 497.

33. – Act, —Omission.- The word 'act' denotes as well a series of acts, as a single act; the word 'omission' denotes as well a series of omissions as a single omission.

COMMENT

Read with Section 32, Section 33 yields the following propositions:-

'Act' includes-

- (a) a single positive act.
- (b) Series of acts.
- (c) A single illegal omission.
- (d) A series of illegal omissions.

34. Acts done by several persons in furtherance of common intention.- When a criminal act is done by several persons in furtherance of the common intention of all, each of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

CHARGE

That on or about you.....at.....along with B.C.D.E., etc., committed a criminal act (enter the detail of the act) punishable under Section 34,I.P.C., in furtherance of a common intention or you..... And B.C.D.E. etc., arrived at (give the date and time) the meeting,(give the details of common intention) and you are guilty under Sectionof the I.P.C, read with Section 34, I.P.C.

COMMENTS

Principle: The principle underlying the section is that as the intention is common, the liability must also be common.- Ganesh Singh v. Ram Rafie, (1869)S3 Bom. LR (Privy Council) 44,45; B.N. Sirkantiah v.State, AIR 1958 SC 672. See also Viswanth Shanthamallappa Dhule v. State of Karnataka, AIR 1998 SC 246 : 1998 Cr LJ 400.

Nature of the liability : Where Section 34 applies, the liability of the person liable by virtue of the section (participation in the criminal act with common intention) is not the liability as an abettor but liability as a principal.- Nga Aung Thein, 1935 ILR 13 RANG (210).

When a criminal act is done by several persons : Participation in the act and common intention are two essential ingredients of the section. Therefore, a person who has at no time played any part in the act charged cannot be held guilty by virtue of this section. (Though the participation may not be active or physical or immediate.)- Inderjit v. State, 1986 Cr LJ 966 (Del); Dasrathlal v. State of Gujarat,1979 Cr LJ 1078 (SC).

Applicability of :

- (i) The court is to take recourse to this section even if the section is not specifically mentioned. The finding that assailant concerned should have common intention with the other accused which is in restoration of such a recourse to this section.- Dhanna v.State of Madhya Pradesh, AIR 1996 SC 2478.
- (ii) Section 34 applies even if cumulative effect of injuries be of nature sufficient in the ordinary course of nature to cause death .- State of Assam v. Siba Prasad. Bora, 1985 Cr LJ 43(Gau). See also Lakha Singh v. Singh of Punjab, AIR 1998 SC 323 : 1998 Cr LJ 657

- (iii) In order to attract Section 34 of the Code, there must be pre-arranged plan and meeting of minds which may also develop on the spot. The conduct of the accused preceding, attending and following the occurrence is relevant to find out as to whether he had shared the common intention.- *Domu chopadi v. State*, 1986 (2) Cr LC 261 (Orissa).
- (iv) When accused acted in heat of moment and was on bail for the years, sentence reduced from RI of 3 years to RI of one and half year.- *Rajendra Prasad v. State of Bihar*, 1987 Cr LJ 1069 : AIR 1987 SC 1335 : 1987 CR LR 273 (SC).
- (v) Mere surrender by appellant along with accused before the police does not show meeting of minds as to bring the case within ambit of Section 34.- *Rangaswami v. State of T.N.*, AIR 1989 SC 1137 : 1+989 Cr LJ 875.
- (vi) When an offence is committed in furtherance of common intention of two or more accused, then every one of them is guilty.- *State of Punjab v. Surjit Singh*, (1987) 1 SCJ 254 : 1987 Cr LJ 845 ; AIR 1987 SC 1045 : (1987)1 Crimes 252
- (vii) When circumstances led to no other inference except that of guilt of accused, conviction is justified.- *Basanti v. State of H.P.*, 1987 Cr LJ 1869 :AIR 1987 SC 1572.
- (viii) Strong suspicion against accused cannot take place of proof.- *Basanti v. State of H.P.*, 1967 Cr LJ1869: AIR 1987 SC 1572.
- (ix) In order to convict a person vicariously liable under Section 34 or Section 149, it is not necessary to prove that each and every one of them had indulged in it is not necessary to prove that each and every one of them had indulged in it is not necessary to prove that each and every one of them had indulged in overt acts,- *Rambilas Singh v. State of Bihar*, 1989 Cr LJ 1782: AIR 1989 SC 1593 : (1989) 2 SCJ 280 : (1989)2 Crimes 368 (SC).

Establishment of common intention, done by proving that each shared the intention with the others. It may be formed at the spur of the moment .- *Dajya Moshya Bhil v. State of*

Maharashtra, 1984 Cr LJ 1728 :AIR 1984 SC 1717. Common intention held a question of fact.-
Maqsoodan v. State of U.P., AIR 1983 SC 126 : 1983 Cr LJ 218.

Sharing of common intention by all the accused:

- (i) Accused armed with Dharya which hit the forehead or the victim, who was being chased with stones by other co-accused.
- (ii) Sharing of common intention can be inferred from the fact that second accused secured the deceased and the first accused stabbed him.- Bachittar Singh v. State, (Delhi Administration), 1991 CrLJ2619 (Delhi). See also Vishwanath Shanthamallappa Dhule v. State of Karnataka, AIR 1998 SC 246 : 1998 Cr LJ 400.
- (iii) Some of the accused committing assault on deceased. All of accused persons are not liable for conviction, Dukhmochan Pandey v. State of Bihar, 1998 Cr LJ 66: AIR 1998 SC 40.

Benefit of doubt :

- (i) intention of one of the accused proved but not conductively in the case of others. Held, benefit of doubt to be extended, sentence reduced from life to 5 years.- Ranapartap v. State of Haryana, AIR 1983 SC 680: 1983 Cr LJ 1272: 1983 (2) Crime 342 (SC).
- (ii) The accused in the instant case took a leading part by entering the house and aiding and assisting other in murdering six persons in the house. He was armed with a gun and participated in the murder of the deceased. He was given benefit of doubt since the witnesses described the features of the accused and they did not tally.- Lokpal Singh v. State of M.P., 1985 Cr LJ 1134 : AIR 1985 SC 891 : (1985) Cr LR (SC)189.
- (iii) Supreme Court found the fact and circumstance which proved joint participation of appellants in the crime, in the manner in which looted properties were distributed among them.- Mukund alias Kundu Mishjra v. State of M.P., AIR 1997 SC 2622 : 1997 Cr LJ 3182 : (1997)2 SCJ 65.

Common Ingredient of:

- (i) All other accused are acquitted as evidence of eye witnesses did not prove their participation in the offence of murder. Main accused could not be given benefit of doubt on the same ground. The benefit of doubt does not come under finding of the evidence of some witness as being totally false and absolutely unreliable.-
Jarnail Singh v. State of Punjab, AIR 1996 SC 755 : (1996)2 SCJ 130.
- (ii) All accused acted in concert, were associated with each other in dragging the deceased.

35. When such an act is criminal by reason of its being done with a criminal knowledge or intention.-Whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.

36. Effect caused partly by act and partly by omission.- Wherever the causing of a certain effect, or an attempt to cause that effect, by an act or by an omission, is an offence, it is to be understood that the causing of that effect partly by an act and partly by an omission is the same offence.

Illustration

A intentionally causes Z's death, partly by illegally omitting to give Z food, and partly by beating Z. A has committed murder.

37. Co-operation by doing one of several acts constituting an offence.- When an offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence by doing any one of those acts either singly or jointly with any other person, commits that offence.

Illustration

- (a) A and B agree to murder Z by severally and at different times giving him small doses of poison. A and B administer the poison according to the agreement with intent to Murder Z. Z dies from the defect of the several doses of poison so

administered to him. Here A and B intentionally co-operate in the commission of murder and as each of them dies an act by which the death is caused, they are both guilty of the offence though their acts are Separate.

- (b) A and B are joint jailors, and as such have the charge of Z, a prisoner alternatively for six hours at a time. A and B, intending to cause Z's death, knowingly co-operate in causing that effect by illegally omitting, each during the time of his attendance, to furnish Z with food supplied to them for that purpose, dies of hunger. Both A and B are guilty of the murder of Z.
- (c) A, a jailor, has the charge of Z, a prisoner. A, intending to cause Z's death, illegally omits to supply Z with food in consequence of which Z is much reduced in strength, but the starvation is not sufficient to cause his death. A is dismissed from his office, and B succeeds him. B, without collusion or co-operation with A, illegally omits to supply Z with food, knowing that he is likely thereby to cause Z's death. Z dies of hunger. B is guilty of murder, but as A did not co-operate with B. A is guilty only of an attempt to commit murder

38. Persons concerned in criminal act may be guilty of different offences.- When several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act.

Illustration

A attacks Z under such circumstances of grave provocation that his killing of Z would be only culpable homicide not amounting to murder B, having ill-will towards Z and intending to kill him, and not having been subject to the provocation, assists A in killing Z. Here, though A and B both engaged in causing Z's death, B is guilty of murder, and A is guilty only of culpable homicide.

39. —Voluntarily.— A person is said to cause an effect — voluntarily When he causes it by means whereby he intended to cause it, or by means, at the time of employing those means, he knew or had reason to believe to be likely to cause it.

Illustration

A sets fire, by night, to an inhabited house in a large town, for the purpose of facilitating a robbery and thus causes the death of a person. Here, A may not have intended to cause death; and may even be sorry that death has been caused by his act; yet, if he knew that he was likely to cause death, he has caused death voluntarily.

¹[40. —**Offence**—.- Except in the ²[Chapters] and sections mentioned in clauses 2 and 3 of this section, the words —offence|| denotes a thing made punishable by this Code.

In Chapter IV, ³[Chapter V A] and in the following sections namely, sections —[64, 65, 66, ⁵[67], 71], 109, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389, and 445, the words — offence|| has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.]

1. Subs .by Act 27 of 1870, sec. 1, for the original section.

2. Subject. by Act 8 of 1930, sec.2 and Sch.1, for —Chapter||.

3. Ins. by Act 8 of 1913, sec. 2.

4. Ins. by Act 8 of 1882, sec.1.

5. Ins. by Act 10 of 1886, sec. 21 (1)

41. —**Special law**||.- A —special law|| is a law applicable to a particular subject.

42. —**Local law**||.- A —local law|| is a law applicable only to a particular part of ⁶[⁷[***]⁸[India]].

43. —**Illegal**||, —**Legally bound to do**||.- The word —illegal|| is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action; and a person is said to be —legally bound to do|| whatever it is illegal in him to omit.

44. —**Injury**||.- The word —injury|| denotes any harm whatever illegally caused to any person, in body, mind, reputation or property.

45. —**Lifel**.- The word death denotes the death of a human being, unless the contrary appears from the context .

46. —**Deathl**.-The word death denotes the death of a human being , unless the contrary appears from the context.

47. —**Animall**.- The word animal denotes any living creature, other than a human being.

48. —**Vessell**.-The word vessel denotes any thing made for the conveyance by water of human beings or of property.

49. —**Yearl, Monthl**.- Wherever the word year or the word month is used, it is to be understood that the year or the month is to be reckoned according to the British calendar.

50. —**Sectionl**.- The word section denotes one of those portions of a Chapter of this Code which are distinguished by prefixed numeral figures.

6. Subs. By the A.O 1948, for “British India”.

7. The words “the territories comprised in “ omitted by Act 48 of 1952, sec 3 and Sch. II.

8. Subs. by Act 3 of 1915, sec . 3 and Sch., for the “the States” which had been subs. by the A.O 1950, for “the Provinces” .

51. —**Oathl**.- The word oath includes a solemn affirmation substituted by law for an oath, and any declaration required or authorized by law to be made before a public servant or to be used for the purpose or authorized by law to be made before a public servant or to be used for the purpose of proof, whether in a Court of Justice or not.

52. —**Good faithl**.- Nothing is said to be done or believed in good faith which is done or believed without due care and attention.

52A. —**Harborl**.- Except in section 157, and in section 130 in the case in which the harbour is given by the wife or husband or the person harboured, the word harbor includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition or means or conveyance, or the assisting a person by any means, whether of the same kind as those enumerated in this section or not, to evade apprehension.]